

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA IMMEDIATE

C O N F I D E N T I A L STATE 033743

E.O. 11652: GDS

TAGS: EIND, BDIS, EINV, PFOR, PE

SUBJECT: MARCONA - FREIGHT CONTRACT PROBLEMS

REF: LIMA 1152

1. MARCONA IS UNDERSTANDABLY CONCERNED ABOUT QUESTION OF ORE SHIPMENTS TO ARGENTINA (PARA 1(E) REFTTEL), AND HAS RECEIVED A TELEX FROM RUIZ DE CASTILLA INDICATING THAT MINPECO AND/OR MINEROPERU ARE NOT REPEAT NOT PREPARED TO SHIP ARGENTINE SALES IN MARCONA VESSELS. (REASONS GIVEN INCLUDE FACT THAT (A) RATES FOR ARGENTINA ARE NOT INCLUDED IN CONTRACT, (B) SALE BASED ON POLITICAL LEVEL NEGOTIATIONS BETWEEN GOVERNMENTS, (C) SALE IS ON FOB TERMS, (D) PERU AND ARGENTINA HAVE BILATERAL AGREEMENT AFFECTING SUCH SHIPMENTS, (E) ARGENTINES OBJECT TO ANY LIGHTERAGE OPERATIONS, AND THUS SHIPS CANNOT EXCEED 11,000 TONS.) WE HAVE ENCOURAGED MARCONA TO RESPOND IN LOW-KEY MANNER, REITERATING ITS POSITION THAT DECEMBER 11 CONTRACT COVERS THESE SALES, REQUESTING OPPORTUNITY TO QUOTE FREIGHT RATES AND NOTING THAT ISSUE HAS BEEN BROUGHT TO ATTENTION OF US NEGOTIATING TEAM.

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2. BECAUSE OF POTENTIAL PROBLEMS WHICH MAJOR DISAGREEMENT ON THIS ISSUE COULD CAUSE FOR NEGOTIATIONS AS A WHOLE, WE

BELIEVE IT NECESSARY TO ENCOURAGE GOP FLEXIBILITY AT AN APPROPRIATELY HIGH LEVEL. ACCORDINGLY, YOU ARE REQUESTED TO DELIVER THE FOLLOWING LETTERS TO AMBASSADOR MARCHAND AND RUIZ DE CASTILLO (PARAS 3 AND 4, RESPECTIVELY).

3. QUOTE

DEAR LUIS:

AS YOU MAY RECALL FROM OUR DISCUSSIONS SEVERAL WEEKS AGO, SEVERAL PROBLEMS HAD ARISEN CONCERNING THE INTERPRETATION AND APPLICATION OF THE CONTRACT BETWEEN MARCONA AND CPV SIGNED IN ACCORDANCE WITH PARAGRAPH 3 OF THE DECEMBER 11, 1975 MEMORANDUM OF UNDERSTANDING BETWEEN OUR GOVERNMENTS. ONE OF THOSE ISSUES CONCERNS THE CARRIAGE BY MARCONA TO TRADITIONAL CONSUMERS OF IRON ORE FOR WHICH RATES ARE NOT SPECIFICALLY PROVIDED IN THE CONTRACT.

IT IS OUR UNDERSTANDING THAT HIERROPERU HAS MADE ARRANGEMENTS FOR THE SALE OF SOME 50,000 TONS OF ORE TO AN ARGENTINE COMPANY (SOMISA), A COMPANY WHICH AS RECENTLY AS JUNE 1975 HAD PURCHASED ORE DIRECTLY FROM MARCONA. HIERROPERU AND MINEROPERU HAVE APPARENTLY TAKEN THE POSITION THAT SUCH SALES ARE NOT COVERED BY THE CONTRACT OF DECEMBER 11, AND ARE MAKING ARRANGEMENTS FOR AN FOB SALE, A SALE WHICH WOULD THUS DEPRIVE MARCONA OF AN OPPORTUNITY TO BID ON AND, ULTIMATELY, TO CARRY THE ORE.

ARTICLE 3 OF THE MEMORANDUM OF UNDERSTANDING PROVIDES FOR CONTRACTING BETWEEN CPV AND THE TRADITIONAL CARRIERS (MARCONA) "FOR SHIPMENTS OF PERUVIAN ORE PRODUCTS TO THE TRADITIONAL CONSUMERS" ON A RIGHT-OF-FIRST-REFUSAL BASIS. ALTHOUGH THE CONTRACT BETWEEN CPV AND MARCONA OF DECEMBER 11 DOES NOT INCLUDE FREIGHT RATES FOR ARGENTINA, IT ALSO PROVIDES (IN PARAGRAPH 1) FOR CARRIAGE BY MARCONA OF "ALL IRON ORE SHIPPED FROM SAN NICHOLAS BAY, PERU, TO TRADITIONAL RECEIVERS OF PERUVIAN IRON ORE." SOMISA, WHICH HAS PURCHASED IRON ORE FROM MARCONA ON

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VARIOUS OCCASIONS IN THE PAST, INCLUDING A SHIPMENT DELIVERED AS RECENTLY AS JUNE 1975, IS OF COURSE, A "TRADITIONAL CONSUMER."

IN CONVERSATIONS DURING OUR LAST TRIP AMONG JORGE RUIZ DE CASTILLA, FURTH, AND MYSELF, WE WERE ABLE TO COME TO AGREEMENT THAT THE TRADITIONAL RECEIVERS WERE DEFINED IN TERMS OF SPECIFIC FORMER CUSTOMERS RATHER THAN COUNTRIES.

THIS DEFINITION IS OBVIOUSLY FAVORABLE TO PERU IN ALLOWING WIDE SCOPE FOR ITS OWN ARRANGEMENTS.

IT IS OUR UNDERSTANDING THAT THERE ARE NO PRACTICAL OBSTACLES TO MARCONA'S PROVIDING THE SHIPS TO BE USED IN THIS SALES TRANSACTION, AS MARCONA IS PREPARED TO PROVIDE COMPETITIVE RATES FOR THE VESSELS OF 11,000 TONS APPARENTLY DESIRED BY THE ARGENTINES, AND TO OPERATE FULLY WITHIN THE TERMS OF THE ARGENTINE-PERU BILATERAL AGREEMENT (AS OF COURSE THEY DID IN THE PAST).

GIVEN THE IMPORTANCE OF THE MEMORANDUM OF UNDERSTANDING AND THE CONTRACT CONCLUDED THEREUNDER FOR THE NEGOTIATIONS AND FOR OUR RELATIONS AS A WHOLE, WE HOPE IT WILL BE POSSIBLE FOR THE AFFECTED AGENCIES OF THE GOVERNMENT OF PERU TO SHOW THE FLEXIBILITY NECESSARY TO PERMIT MARCONA THE OPPORTUNITY OF SUBMITTING BIDS FOR THESE SHIPMENTS, AND THUS HELP US TO AVOID A SITUATION WHICH MIGHT SERIOUSLY DETRACT FROM THE SUCCESSFUL CONCLUSION OF THESE NEGOTIATIONS. (SIGNED FISHLOW) END QUOTE.

4. QUOTE

DEAR JORGE:

I AM WRITING TO YOU WITH REGARD TO DELIVERIES OF PERUVIAN IRON ORE TO SOMISA IN ARGENTINA. AS YOU RECALL, WE DISCUSSED THIS MATTER BRIEFLY ON JANUARY 28 IN CALLAO, AND I WAS UNDER THE IMPRESSION THAT IN THE COURSE OF YOUR SUBSEQUENT DISCUSSIONS WITH GORDON FURTH THE QUESTION OF MARCONA'S FURNISHING RATES FOR THIS TRAFFIC HAD BEEN RESOLVED. HOWEVER, I HAVE RECENTLY BEEN NOTIFIED BY CONFIDENTIAL

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MARCONA IN SAN FRANCISCO THAT THIS IS NOT THE CASE AND THAT IN FACT MARCONA HAS BEEN TOLD THAT THEY WILL NOT BE PERMITTED TO BID UPON OR CARRY THESE SHIPMENTS.

I WAS AWARE THAT HIERROPERU HAD MADE ARRANGEMENTS FOR THE SALE OF SOME 50,000 TONS OF IRON ORE TO SOMISA, A COMPANY WHICH AS RECENTLY AS JUNE 1975 HAD PURCHASED ORE DIRECTLY FROM MARCONA. HIERROPERU HAS APPARENTLY TAKEN THE POSITION THAT SUCH SALES ARE NOT COVERED BY THE CONTRACT OF DECEMBER 11, AND ARE MAKING ARRANGEMENTS FOR AN FOB SALE, A SALE WHICH WOULD THUS DEPRIVE MARCONA OF AN OPPORTUNITY TO BID ON AND, ULTIMATELY, TO CARRY THE ORE.

ARTICLE 3 OF THE MEMORANDUM OF UNDERSTANDING PROVIDES FOR CONTRACTING BETWEEN CPV AND THE TRADITIONAL CARRIERS

(MARCONA) "FOR SHIPMENTS OF PERUVIAN ORE PRODUCTS TO THE

TRADITIONAL CONSUMERS" ON A RIGHT-OF-FIRST-REFUSAL BASIS.
ALTHOUGH THE CONTRACT BETWEEN CPV AND MARCONA OF DECEMBER
11 DOES NOT INCLUDE FREIGHT RATES FOR ARGENTINA, IT ALSO
PROVIDES (IN PARAGRAPH 1) FOR CARRIAGE BY MARCONA OF "ALL
IRON ORE SHIPPED FROM SAN NICHOLAS BAY, PERU, TO TRADI-
TIONAL RECEIVERS OF PERUVIAN IRON ORE." SOMISA, WHICH
HAS PURCHASED IRON ORE FROM MARCONA ON VARIOUS OCCASIONS
IN THE PAST, INCLUDING A SHIPMENT DELIVERED AS RECENTLY
AS JUNE 1975, IS OF COURSE A "TRADITIONAL CONSUMER."

IN OUR CONVERSATIONS LAST TIME WITH FURTH, WE WERE ABLE
TO COME TO AGREEMENT THAT THE TRADITIONAL RECEIVERS . . .
(CONTINUE AS IN ABOVE LETTER) END QUOTE KISSINGER

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